

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.2217 of 2001

- 1.The State of Tamil Nadu, rep. by the
Secretary to Government, Forest
and Fisheries Department,
Fort St. George, Madras-9.
- 2.The District Collector,
South Arcot District.
- 3.The Tahsildar, Tirukoilur.
- 4.The Special Assistant Director,
(Fisheries), Villupuram. Appellants

Vs.

- 1.S.Samu Narayanan
- 2.A.Natesa Gounder
- 3.V.Ramadass Gounder
- 4.S.Ananda Gounder
- 5.M.Panduranga Gounder
- 6.V.Kasimkhan Saheb
- 7.S.Srirama Iyengar
- 8.G.Parasurama Gounder
- 9.K.Krishnasamy Gounder ... Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 15.11.1995 made in W.P.No.9713 of 1985.

For Appellants : Mr.P.Subramanian,
Government Advocate

For respondents : Mr.K.S.Srinivasa Rao for
M/s Radha Gopalan

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 15.11.1995 made in W.P.No.9713 of 1985.

2. The respondents herein-writ petitioners have filed the said writ petition seeking to issue a Writ of Mandamus directing respondents 1 to 3 therein to forbear from taking over the village irrigation tank at Emappur village and vesting the same with the fourth respondent therein, the The Special Assistant Director, (Fisheries), Villupuram, pursuant to the order of the second respondent therein-The District Collector, South Arcot District, dated 24.06.1985. The learned single Judge, without advertng to the factual details based on which the writ petitioners sought for issuance of Writ of Mandamus merely referring the earlier decision of this Court rendered in W.P.No.5203 of 1995 dated 26.09.1995, has allowed the said writ petition. Questioning the same, the Government and other officers have filed the present writ appeal.

3. The learned Government Advocate has brought to our notice that in W.P.No.5203 of 1995 dated 26.09.1995, the Honourable Judge(Shivaraj Patil,J.), after advertng to the case of the petitioners therein and the stand taken by the respondents-officials and after finding that the claim of the writ petitioner is unfounded and not substantiated, has dismissed the writ petition being devoid of any merit. When such is the position, it is not clear how the learned single Judge has allowed the writ petition following the said order.

4. We have verified the order passed in W.P.No.5203 of 1995 dated 26.09.1995 and the ultimate conclusion arrived at by the learned single Judge. In the present case, we are of the view that the learned single Judge has committed an error in allowing the writ petition following the decision in W.P.No.5203 of 1995 dated 26.09.1995.

5. In view of our conclusion, in the normal circumstances, it is but proper to remit the matter to the learned single Judge for disposal on merits. Considering the relief prayed for viz., issuance of Writ of Mandamus, that too in the year 1985, we are not inclined to adopt such course. We perused the relief prayed for in the writ petition and the stand taken as well as the stand of the official respondents. We are satisfied that even on merits, no relief as claimed be granted. It is brought to our notice by the learned Government Advocate that the tank in question belongs to the Government and in G.O.Ms.No.1286, Forest and Fisheries Department, dated 09.11.1984, orders have been issued for taking over of the major irrigation tanks and long seasonal tanks in Madurai, Saurth Arcot District for intensive stocking and fisheries development. In such circumstances, as rightly pointed out by the learned Government Advocate, no direction as claimed by the petitioners can be granted, more particularly at this juncture.

6. In these circumstances, the order of the learned single Judge dated 15.11.1995 made in W.P.No.9713 of 1985 is set aside. Consequently, we dismiss the writ petition. Writ appeal is allowed. No costs.
raa

Sd/
Asst.Registrar

/true copy/ सत्यमेव जयते

Sub Asst.Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Forest and Fisheries Department,
Fort St. George, Madras-9.

2.The District Collector,
South Arcot District.

3.The Tahsildar, Tirukoilur.

4.The Special Assistant Director,
(Fisheries), Villupuram.

+ one cc to Mr. S. Radha Gopalan, Advocate sr no. 53421

AKM(Co)
NM(22.11.2006)

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